

**CITY OF SAN DIEGO
COMMISSION FOR ARTS AND CULTURE
FY 2007 ALLOCATIONS AGREEMENT**

CONTRACT ADMINISTRATOR

EXECUTIVE DIRECTOR

COMMISSION FOR ARTS AND CULTURE
1010 Second Avenue, Suite 555
San Diego, CA 92101-4998
Phone: (619) 533-3050

CONTRACTOR

«CONTACT ORGANIZATION»

«AddressMail1»
«Address City» CA, «AddressZip»

This Agreement is entered into between The City of San Diego, a municipal corporation (City), and «Organization», a nonprofit organization (Contractor) [hereinafter "the Parties"].

RECITALS

- A. Contractor has applied for City Transient Occupancy Tax (TOT) funding within the Arts, Culture and Community Festivals program category. Eligible programs enhance the economy and contribute to San Diego's reputation as a cultural destination by nurturing and maintaining art and culture institutions of national and international reputation; by supporting programs and projects that provide access to excellence in culture and the arts for residents and visitors; and by funding programs and events which enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
- B. This Agreement is made to further the goal of the Allocations Program of the City of San Diego Commission for Arts and Culture (Commission), the purpose of this Contract for Service is to enhance the economy and contribute to San Diego's reputation as a cultural destination by nurturing and maintaining art and culture institutions of national and international reputation; by supporting programs and projects that provide access to excellence in culture and the arts for residents and visitors; and by funding programs and events which enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
- C. The program to be accomplished by Contractor is of such nature that the City is currently not performing and that the interests of the City are better served by an Agreement with Contractor than by the performance of such a program by City.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

AGREEMENT

The above-listed recitals are true and correct and are hereby incorporated by reference.

1. Scope of Services

- a. Exhibit A - Contractor shall conduct those program activities stated in the Contractor's Program Objectives and Budget Summary which is attached hereto as Exhibit A and by this reference incorporated into this Agreement. Program activities to be provided under the terms of this Agreement shall occur from July 1, 2006 through June 30, 2007.

- b. Final Performance Report - Contractor shall submit a Final Performance Report by September 30, 2007 indicating the extent to which the program objectives contained in Exhibit A of this Agreement were accomplished. The Final Performance Report shall be accompanied by the Final Request for Payment and documentation evidencing credit to the City of San Diego Commission for Arts and Culture for its financial support, including but not limited to copies of publicity and advertising materials. Contractor shall also attach to the Final Performance Report a Statement of Compliance signed by the executive director or other chief executive officer of the Contractor, certifying that the Contractor has complied with the terms of the Agreement.
- c. Financial Disclosure - By September 30, 2007, any Contractor receiving funding in the amount of \$10,000 or more shall submit copies of true, accurate and complete financial disclosure documentation each year, evidencing the Contractor's financial status for the Contractor's fiscal year ending on or before June 30, 2007. These financial documents shall include, but are not limited to the following:
 - 1) A statement of the expenditure of City funds by program to be identified in the same expenditure classifications as contained in the City funded final budget approved through the application process and compared with the budgeted amounts.
 - 2) A statement of revenues and expenditures and a balance sheet of all funds received by the Contractor.
 - 3) If the Contractor will be receiving \$500,000 or more of TOT funding, and if that funding represents more than 10% of the Contractor's annual budget, the Contractor shall also submit salary and wage ranges for each of its job classifications, including actual executive salaries and benefits packages applicable for the contract period, during the annual budget process each fiscal year. Nothing shall prohibit any Contractor who receives less than \$500,000 in TOT funding from voluntarily complying with this disclosure requirement.
- d. Audits - If City funding is \$75,000 or greater, audited financial statements (for the Contractor's fiscal year ending on or before June 30, 2007) as well as the statement of revenues and expenditures with the balance sheet of all funds received by the Contractor, must be: i) prepared in accordance with generally accepted accounting principles (GAAP); ii) audited by an independent Certified Public Accountant in accordance with generally accepted auditing standards (GAAS); and iii) submitted to the Contract Administrator by November 30, 2007. Upon written request by the Contractor, and in the sole discretion of the Contract Administrator, the Contractor may be granted up to thirty (30) additional days to comply with this requirement.

2. **Council Policies**

- a. Council Policy 100-03 - Contractor agrees to comply with Council Policy 100-03 and the General Requirements and Conditions which provide a set of uniform guidelines, conditions, and criteria governing the application for, and granting of, funds to private non-profit organizations for the purpose of supporting their ongoing operational expenses and/or their sponsorship of special events. Council Policy 100-03, attached hereto as Exhibit B, is by this reference incorporated into this Agreement.
 - 1) Contractors must provide a cash match for every dollar the City provides, as specified in the applicable program funding application and guidelines.

Transient Occupancy Tax funds may not be a source of matching funds. A percentage of in-kind funding is allowed as a cash match for Contractors whose actual operating income for the last completed fiscal year did not exceed \$30,000.

- 2) Failure to comply with the matching fund requirement may result in a reduction, suspension, or termination of payments to Contractor under this Agreement.
- b. Council Policy 100-04 - Contractor agrees to comply with Council Policy 100-04, which establishes that all City contractors, including but not limited to construction contractors, consultants, grantees, and providers of goods and services agree to comply with all applicable titles of the Americans with Disabilities Act. Council Policy 100-04, attached hereto as Exhibit C, is by this reference incorporated into this Agreement.
- c. Council Policy 100-17 - Contractor agrees to comply with Council Policy 100-17 that requires all City construction contractors, consultants, grantees and providers of services to provide a drug-free workplace for the performance of work done in connection with a contract held by the City. Council Policy 100-17, attached hereto as Exhibit D, is by this reference incorporated into this Agreement.
- d. Compliance with the City's Equal Employment Opportunity Outreach Program – Contractor shall comply with the requirements of the City's Equal Employment Opportunity Outreach Program (San Diego Municipal Code Sections 22.2701 - 22.2708). Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City's Equal Employment Opportunity Outreach Program requirements. Nothing in this Section shall be interpreted to hold Contractor liable for any discriminatory practice of its subcontractors.
- e. Non-Discrimination Clause - Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. Contracts between the Contractor and any subcontractors, vendors, and suppliers shall contain this language.
- f. Compliance Investigations - Upon the City's request, Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code Section 22.3501 - 22.3517). Contractor understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against the Contractor up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of said Nondiscrimination in Contracting Ordinance.

3. **Excess Costs**

City shall not be responsible in any way for monetary losses of any type incurred by Contractor as a result of Contractor's conducting the program described in Exhibit A. Contractor agrees that the City's monetary contribution is limited to the amount provided for in this Agreement, and that the City shall not be responsible for cash costs or support services other than as provided for in this Agreement.

4. **Contract Administrator**

- a. The Executive Director of the City of San Diego Commission for Arts and Culture is designated as the City's Contract Administrator for the purposes of this Agreement. The Contract Administrator shall receive and process all reports and requests for payment. All correspondence and notices shall be sent to the following address:

City of San Diego Commission for Arts and Culture
1010 Second Avenue, Suite 555
San Diego, CA 92101-4998

- b. Contractor shall inform Contract Administrator, in writing, within ten days upon the occurrence of any of the following changes:
- 1) The resignation, retirement or discharge of its executive director or other managing agent;
 - 2) A majority change in the membership of the board of directors;
 - 3) A change in programming that significantly deviates from the Contractor's mission or overall purpose; and/or
 - 4) A change in annual operating income such that the matching fund requirement will not be met by the end of the contract year.
- c. The City reserves the right to suspend funding until Contractor complies with the terms of the Agreement, and if the Contractor fails to comply with the terms of the Agreement, to reduce payments to the Contractor or to terminate this Agreement.

5. **Payments**

- a. The City shall pay Contractor a sum not to exceed «Allocation» (written amount here), the amount allocated by City Ordinance No. O-19522 adopted on July 31, 2006, to be used in support of Contractor's Program Objectives described in Exhibit A.
- b. The City shall not make any payment to the Contractor if either of the following is not on file with the City:
- 1) The Final Performance Report as well as any financial disclosure or audit required under this Agreement or any previous Agreement.
 - 2) Any other document required under this Agreement.
- c. The City will not reimburse cash advances or refundable deposits.

- d. Payments shall be made upon written request to the Contract Administrator. Each request shall consist of a completed Request for Payment form (to be provided by Contract Administrator) with proof of both expenses incurred and payments made in conformance with the requirements of Section 5g of this Agreement.
- e. Requests for payment shall be submitted no more than one time per three month period unless written approval is secured in advance from the Contract Administrator. Requests shall be submitted according to the following schedule:

Submit Request for Payment #1 for expenses incurred on or between July 1 and September 30, 2006 after October 1, 2006;

Submit Request for Payment #2 for expenses incurred on or between October 1 and December 31, 2006 after January 1 2007;

Submit Request for Payment #3 for expenses incurred on or between January 1 and March 31, 2007 after April 1, 2007; and

Submit Final Request for Payment for expenses incurred on or between April 1 and June 30, 2007 after July 1 and before September 30, 2007.

- f. Each request shall be no more than 25% of the total amount of the Agreement unless written approval stating otherwise is secured in advance from the Contract Administrator.
- g. Contractor's expenses shall only be reimbursed under the following conditions:
 - 1) The expenses were incurred and paid for by Contractor within the City's fiscal year (July 1, 2006 to June 30, 2007);
 - 2) The expenses are in accordance with the Program Objectives and Budget Summary outlined in Exhibit A; and,
 - 3) The expenses are approved by the Contract Administrator.
- h. The Final Performance Report, as well as any required financial disclosures or audits as described in Sections 1b-1d of this Agreement must accompany the Final Request for Payment.
- i. The City reserves the right to temporarily withhold or adjust the final payment, subject to the City's approval of the Final Performance Report, all financial disclosures, and any audits required of Contractor under this Agreement. The City's approval will not be withheld unreasonably.
- j. Account balances remaining after January 31, 2008 will be forfeited.

6. Additional Requirements and Conditions

- a. Insurance - Prior to the award, and at all times during the term of this Agreement, Contractor shall maintain insurance coverage as follows:

Commercial General Liability. Commercial General Liability (CGL) insurance written on an occurrence basis which shall cover liability arising from any and all personal or bodily injury or property damage in the amount of one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of one million dollars (\$1,000,000). All defense costs shall be outside the limits of the policy.

Commercial Automobile Liability. For all of the Contractor's automobiles including owned, hired and non-owned automobiles, the Contractor shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. If Contractor does not own any automobiles, the insurance certificate shall reflect coverage for all hired and non-owned automobiles.

Workers' Compensation. For all of the Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000.) of employers' liability coverage, and the Contractor shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by insurers rated at least "A-" and "VI" or better by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is shown on the current California List of Eligible Surplus Lines Insurers (LESLI list).

Deductibles. Deductibles and self-insured retentions on any policy shall be the responsibility of the Contractor and shall be disclosed to the City at the time the evidence of insurance is provided.

Specific Provisions Required. Each policy required hereunder shall expressly provide, and an endorsement shall be submitted to the City, that:

- 1) Except as to Workers' Compensation insurance policies, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City.
- 2) The policies are primary and any insurance that may be carried by the City shall be deemed excess and non-contributory, as reflected in an endorsement which shall be submitted to the City.
- 3) The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by the Contractor to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten days notice will be provided.

Certificates of Insurance. Before performing any services, the Contractor shall provide the City with all Certificates of Insurance accompanied with all required endorsements.

Reporting Provisions. Any failure to comply with any reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents, officials or representatives.

Policy Modifications. The Contractor shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

Additional Insurance. The Contractor may obtain additional insurance not required by this Agreement.

- b. Certification of Good Standing - Prior to the award, Contractor must be in good standing with the Secretary of State and Franchise Tax Board. All required filings must be current and the status of the corporation must be active.
- c. Acknowledgments - Contractor shall include a credit line in every printed, visual or recorded item or in every exhibit, display or performance that describes or is prepared in connection with the Agreement. The following is an example of a suggested credit line: *"Major funding provided by the City of San Diego Commission for Arts and Culture."*
- d. Audit and Inspection of Records – Regardless of funding level, the Contractor and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego, at any time during normal business hours and as often as the City deems necessary, all of the data and records with respect to all matters covered by this Agreement [City's Right]. The City's Right includes the right to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. Contractor shall maintain, and require its subcontractors to maintain, such data and records for a period of not less than four years following receipt of final payment under this Agreement. If Contractor does not make all records available within the City/County of San Diego, then the Contractor shall pay all the City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. The Contractor shall include the City's Right as described in this Section in any and all of its subcontracts, and shall ensure that it is binding upon all of its subcontractors.

7. Indemnification and Hold Harmless

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Contractor, or Contractor's employees, agents and officers, arising out of any services performed under this Agreement, the Contractor agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, and employees from and against all liability. The obligation to indemnify shall be effective even if the established passive negligence of the City, its agents, officers, or employees contributes to the loss or claim. Contractor further agrees that the duty to defend includes attorneys fees and all costs associated with enforcement of this indemnification provision, defense of any claims arising from this Agreement; and, where a conflict of interest exists, or may exist between the Contractor and the City, the reasonable value of attorneys fees and all costs if the City chooses, at its own election, to conduct its own defense or participate in its own defense of any claim related to this Agreement. The Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising

from the established active negligence, sole negligence, or willful misconduct of the City, its agents, officers or employees.

8. City's Right to Terminate for Convenience

- a. The Council, based on the fiscal status of the General Fund may reallocate the funding of existing programs, activities and organizations upon the recommendation of the City Manager.
- b. The City may, at its sole option and for its convenience, terminate all or any portion of the Agreement by giving notice of such termination to the Contractor. Such notice shall be delivered to the Contractor at the following address by certified mail with return receipt for delivery to the City:

Contract Organization

AddressMail

AddressCity CA, AddressZip

The termination of services under this Agreement shall be effective upon receipt of the notice by the Contractor. After termination of this Agreement, Contractor shall complete only that portion of the work which is necessary or required in the City's sole opinion and judgment for the orderly filing of documents and closing of the Contractor's services under this Agreement. For services rendered in completing the work, the Contractor shall be entitled to fair and reasonable compensation for the services performed by the Contractor before the effective date of termination.

9. Independent Contractors

The Contractor and any subcontractors employed by the Contractor shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Contractor concerning the details of the Contractor's performance of the services provided under this Agreement, or to exercise any control over such performance, shall mean only that the Contractor shall follow the direction of the City concerning the end results of the performance.

10. Compliance with Controlling Law

The Contractor shall comply with all laws, ordinances, regulations and policies of the Federal, State and local governments applicable to this Agreement. In addition, the Contractor shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

11. Jurisdiction and Venue

The venue for any suit or proceeding concerning this Agreement shall be in the County of San Diego, State of California.

12. Time of Essence

Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement.

13. **Term of Agreement**

The terms and obligations set forth in this Agreement shall begin July 1, 2006 and terminate on February 1, 2008.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to the Mayor's delegation of authority in San Diego Municipal Code section 22.3223 authorizing such execution, and by «ContactOrganization».

City of San Diego

By: _____ Date: _____
Victoria L. Hamilton, Executive Director
Commission for Arts and Culture

«ContactOrganization»

I Hereby Certify that I can legally bind «ContactOrganization» and that I have read all of this Agreement.

By: _____
Signature of Authorized Representative Title

Print Name Date

I Hereby Approve the form and legality of the foregoing Agreement this _____ day of _____, 200____.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Christina Bellows
Deputy City Attorney